

TOW TRUCK ACT 1989 No. 158

NEW SOUTH WALES



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TOW TRUCK ACT 1989 No. 158

NEW SOUTH WALES



Act No. 158, 1989

An Act to provide for a licensing and certification scheme for tow truck operators and drivers and to regulate other matters relating to the tow truck industry; to constitute the Tow Truck Industry Council; to repeal the Tow-truck Act 1967, the Tow Truck Industry Act 1987 and certain other Acts; to amend certain Acts; and for other purposes. [Assented to 12 December 1989]

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The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Tow Truck Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"Council" means the Tow Truck Industry Council of New South Wales constituted by this Act;

"director" has the same meaning as in the Companies (New South Wales) Code;

"drivers certificate" means a tow truck drivers certificate granted under this Act;

"holder" means, in relation to a joint licence, each person to whom the licence is granted;

"licence" means a tow truck operators licence (including a joint licence) granted under this Act;

"motor vehicle" means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or a light rail system;

"operate", in relation to a tow truck, means tow or offer to tow a motor vehicle by means of the tow truck;

"public street" means any street, road, lane, thoroughfare, footpath or place open to or used by the public, and includes any place at the time open to or used by the public, whether on the payment of money or otherwise;

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"tow" includes:

- (a) lift and tow, or lift and carry; and
- (b) lift for the purpose of towing or carrying; and
- (c) carry on a trailer; and
- (d) place onto a trailer for the purpose of carrying; and
- (e) any other action or operation prescribed for the purposes of this definition,

but does not include, unless the regulations otherwise provide, carrying more than one vehicle on a trailer or placing more than one vehicle onto a trailer;

"tow truck" means:

- (a) a motor vehicle equipped with a lifting device; or
- (b) a motor vehicle equipped with a trailer, towing attachment or other device; or
- (c) any other motor vehicle prescribed for the purposes of this definition,

that is capable of being used to tow a motor vehicle;

"tow truck operator" means a person who operates one or more tow trucks (either personally, as a member of a partnership or by the person's employees, contractors or agents) for the purpose of towing motor vehicles;

"towing authority" means an authority required by this Act for the towing of a motor vehicle on a public street.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Application of Act to Crown

4. (1) Except as provided by subsection (2), this Act does not apply to or in respect of a tow truck operated by the Crown or a statutory body representing the Crown.

(2) This Act applies to persons (other than employees of the Crown or of a statutory body representing the Crown) who carry out tow truck

operations under a contract or arrangement made or entered into with the Crown or a statutory body representing the Crown.

**PART 2 - OPERATORS LICENCES AND DRIVERS
CERTIFICATES**

Division 1 - Tow truck operators licences

Tow truck operators must be licensed

5. A person must not carry on the business of a tow truck operator, or advertise that the person carries on the business of a tow truck operator, unless:

- (a) the person is the holder of a tow truck operators licence (not being a licence that is suspended); and
- (b) the kind of tow truck operations carried out by the person in the course of that business, or advertised, are permitted by that licence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Applications for licences

6. (1) Applications for licences are to be made to the Council.

(2) Two or more persons intending to carry on in partnership the business of a tow truck operator may apply for a joint licence or separate licences.

(3) An application must:

- (a) be in the form approved by the Council; and
- (b) specify the training course (if any) completed by the applicant or, in the case of a corporation, by a director or other person concerned in the management of the corporation; and
- (c) specify the place from which the applicant intends to carry on business; and
- (d) specify the tow trucks to be operated by the applicant and give details of the applicant's ownership or otherwise of the tow trucks; and
- (e) in the case of an application made by a corporation - specify the names of the directors of the corporation; and
- (f) contain such other particulars as may be prescribed by the regulations or required by the approved form; and

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- (g) be accompanied by the fee determined by the Council for the licence of the class concerned; and
- (h) be accompanied by such other documents as the Council may require.

Determination of applications for licences

7. (1) The Council is required to determine an application for a licence:

- (a) by granting, in the case of a single applicant, a licence to the applicant or, in the case of 2 or more applicants, a licence in the joint names of the applicants or a licence to each applicant; or
- (b) by refusing the application.

(2) Except as provided by subsection (3), the Council may not grant a licence unless it is of the opinion that the applicant meets or the applicants meet the qualifications set out in section 8 and any other qualifications prescribed by the regulations.

(3) The Council may, if it thinks it appropriate having regard to the special circumstances of the case, grant a licence to an applicant who does not meet one or more of the qualifications set out in section 8 (c)-(f).

What are the qualifications for a licence?

8. A person is qualified to hold a licence if:

- (a) the person would be, in the opinion of the Council, a fit and proper person to hold a licence; and
- (b) in the case of an application by a corporation, each director of the corporation and each person concerned in the management of the corporation would be, in the opinion of the Council, a fit and proper person to hold a licence; and
- (c) the person proposes to carry on the business of a tow truck operator from a place that is, in the opinion of the Council, suitable for the carrying on of the business; and
- (d) the person has a place for the safekeeping of towed motor vehicles for periods of up to 72 hours; and
- (e) the tow trucks that the person is to operate in the course of carrying on the business of a tow truck operator are owned or leased by the person and comply or will comply with this Act

and the regulations and any other applicable Act or regulation;
and

- (f) the person, or in the case of a corporation, a director or other person concerned in the management of the corporation has, in the opinion of the Council, satisfactorily completed any appropriate training course approved by the Council for the purposes of this section; and
- (g) the person (not being a corporation) is of or above the age of 18 years.

Conditions of licences

9. (1) A licence may be granted subject to such conditions as may be specified in the licence.

(2) Without limiting the generality of subsection (1), a licence may contain a condition specifying the kind of towing work that may be carried out by the holder of the licence.

(3) It is a condition of every licence:

- (a) that any tow truck operated by the holder of the licence display the distinctive number-plate (if any) issued for the tow truck pursuant to this Act; and
- (b) that any tow truck so operated, and its equipment, comply with the provisions of this Act or the regulations or any other Act or regulation relating to the design, construction and serviceability of the tow truck or of its equipment; and
- (c) that the provisions of any Act or regulation relating to the limitation of hours of driving a tow truck so operated are complied with; and
- (d) if the holder of the licence is a corporation - that the holder notifies the Council of the particulars of changes of directors of the corporation; and
- (e) that the holder of the licence must not make charges for the towing, salvage or storage of motor vehicles that exceed any applicable maximum charges determined by the Council.

Variation etc. of conditions

10. (1) The Council may, by notice in writing served on the holder of a licence, amend the licence by varying any conditions specified in

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the licence or by adding to the licence or omitting from the licence any conditions.

(2) Any such variation, addition or omission takes effect on and from a date specified in the notice, being a date not earlier than 7 days after the notice is served on the holder of the licence.

(3) On any such variation, addition or omission taking effect, the condition as so varied or added is to be taken to be a condition specified in the licence or the condition omitted is to be taken not to be a condition so specified.

(4) The Council may not vary or omit a condition specified in section 9 (3).

Licence fees

11. (1) The Council may determine such fees for licences as it thinks fit.

(2) Without limiting the generality of subsection (1), the Council may determine:

- (a) different fees for licences authorising the carrying out of different classes of towing work; and
- (b) different fees for the first licence granted to a person and subsequent licences.

Duration of licences

12. A licence remains in force for a period of one year from the date on which it was granted or such shorter period as may be specified in the licence, unless it is sooner cancelled or surrendered.

Amendment of licences

13. (1) A person who proposes to carry on the business of a tow truck operator in partnership with the holder of a licence may apply to the Council for the amendment of the licence to specify the name of the person in the licence.

(2) The Council may not grant an application for the amendment of a licence if it would not have granted a licence as so amended had an application been made for such a licence under this Act.

(3) The Council may charge a fee, not greater than the fee payable for a first licence, for the amendment of a licence.

(4) If an application for the amendment of a licence is granted and the licence is amended by specifying in the licence the name of the person concerned, that person is to be taken to be a person to whom the licence is granted.

**Division 2 - Tow truck drivers
certificates**

Definition

14. In this Division:

"**tow truck**" means a tow truck operated:

- (a) for the purpose of towing motor vehicles from the scenes of motor vehicle accidents; or
- (b) for the purpose of towing motor vehicles which have broken down or, except as provided by the regulations, require towing for any other reason.

Tow truck drivers must hold drivers certificates

15. A person must not:

- (a) drive or stand a tow truck on a public street; or
- (b) use or assist in the use of a tow truck on a public street; or
- (c) obtain or attempt to obtain a towing authority,

unless the person is the holder of a drivers certificate.

Maximum penalty: 20 penalty units or imprisonment for 2 months, or both.

Tow truck operator to employ only holders of drivers certificates for certain purposes

16. A tow truck operator must not use the services of a person to do anything for which a drivers certificate is required under this Act unless the person is the holder of a drivers certificate.

Maximum penalty: 20 penalty units.

Applications for drivers certificates

17. (1) Applications for drivers certificates are to be made to the Council.

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- (2) An application must:
- (a) be in the form approved by the Council; and
 - (b) specify the training course (if any) completed by the applicant; and
 - (c) contain such other particulars as may be prescribed by the regulations or required by the approved form; and
 - (d) be accompanied by the fee determined by the Council for the drivers certificate concerned; and
 - (e) be accompanied by such other documents as the Council may require.

Determination of applications for drivers certificates

18. (1) The Council is required to determine an application for a drivers certificate by granting a drivers certificate to the applicant or by refusing the application.

(2) The Council may not grant a drivers certificate unless it is of the opinion that the applicant meets the qualifications set out in section 19 and any other qualifications prescribed by the regulations.

What are the qualifications for a drivers certificate?

19. A person is qualified to hold a drivers certificate if:
- (a) the person would be, in the opinion of the Council, a fit and proper person to hold a drivers certificate; and
 - (b) the person is the holder of a silver or gold driver's licence issued under the Motor Traffic Regulations 1935; and
 - (c) the person has, in the opinion of the Council, satisfactorily completed any appropriate training course approved by the Council for the purposes of this section.

Conditions of drivers certificates

20. A drivers certificate may be granted subject to such conditions as may be specified in the drivers certificate.

Variation etc. of conditions

21. (1) The Council may, by notice in writing served on the holder of a drivers certificate, amend the drivers certificate by varying any

conditions specified in the drivers certificate or by adding to the drivers certificate or omitting from the drivers certificate any conditions.

(2) Any such variation, addition or omission takes effect on and from a date specified in the notice, being a date not earlier than 7 days after the notice is served on the holder of the drivers certificate.

(3) On any such variation, addition or omission taking effect, the condition as so varied or added is to be taken to be a condition specified in the drivers certificate or the condition omitted is to be taken not to be a condition so specified.

Drivers certificates fees

22. The Council may determine such fees for classes of drivers certificates as it thinks fit.

Duration of drivers certificates

23. A drivers certificate remains in force for a period of one year from the date on which it was granted or such shorter period as may be specified in the drivers certificate, unless it is sooner cancelled or surrendered.

Division 3 - Licences and drivers certificates generally

Notice of refusal

24. (1) If the Council refuses to grant an application for a licence or drivers certificate, or the amendment of a licence, the Council is required to cause notice of:

- (a) the refusal; and
- (b) the grounds for the refusal; and
- (c) the particulars of those grounds,

to be served on the applicant.

(2) In the case of a joint application, it is a sufficient compliance with this section if the notice of refusal is served on any one of the applicants.

(3) If, at the expiration of 90 days after an application for a licence or drivers certificate or for the amendment of a licence is made, the Council has failed to determine the application, the Council is to be

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taken, for the purposes of an appeal under section 25, to have refused the application concerned.

Appeals

25. (1) An applicant for a licence or drivers certificate, or an amendment of a licence, may appeal to a Local Court constituted by a Magistrate sitting alone against the refusal of the Council to grant the application.

(2) The holder of a licence or drivers certificate amended by the Council (other than in accordance with the person's application) may appeal to a Local Court constituted by a Magistrate sitting alone against the amendment.

(3) Appeals must be made within such period as is fixed by the regulations.

(4) Appeals are to be conducted in accordance with section 70 (Procedures on appeal).

Effect of appeal

26. If an appeal is made to a Local Court against the amendment of a licence or drivers certificate, the amendment continues in force until the appeal is determined by the Court, unless the Court otherwise orders.

Determination of appeal

27. (1) A Local Court, in determining an appeal:

- (a) may confirm the decision made by the Council; or
- (b) may disallow that decision and make such order as the Court considers appropriate.

(2) The determination of a Local Court on an appeal is to be taken to be the final decision of the Council and is to be given effect to by the Council.

Police reports

28. For the purpose of deciding whether a person (including a director of a corporation and a person concerned in the management of a corporation) is a fit and proper person to hold a licence or drivers certificate, the Council may:

- (a) request the Commissioner of Police to make inquiries as to the character of the person and to furnish a report; and
- (b) consider any such report furnished by the Commissioner of Police or any other matter the Council considers to be relevant.

Duplicate licences or drivers certificates

29. If the Council is satisfied that a licence or drivers certificate has been lost or destroyed, it may, on payment of any fee determined by the Council, issue a duplicate licence or drivers certificate.

Register of licences and drivers certificates

30. (1) The Council is required to cause to be kept a register, in such form as it determines, of licences and drivers certificates and is required to cause to be recorded in the register in respect of each licence or drivers certificate:

- (a) the matters which by or under this Act are required to be specified in the licence or drivers certificate; and
- (b) particulars of any amendment of the licence or drivers certificate; and
- (c) particulars of any cancellation, suspension or surrender of the licence or drivers certificate,

and may cause to be recorded such other matters as the Council thinks fit.

(2) The Council may cause to be made such alterations in the register as are necessary to ensure that the matters recorded in the register are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken:

- (a) without payment, by any member of the Police Force, officer of the Council or other person authorised by the Council; or
- (b) with the consent of the Council and on payment of any fee determined by the Council, by any other person.

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False or misleading statements in applications

31. A person must not, in an application:
- (a) for a licence or drivers certificate; or
 - (b) for the amendment of a licence,

make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units or imprisonment for 2 months, or both.

Holding out as holder of licence or drivers certificate

32. A person must not hold himself or herself out as the holder of a licence or drivers certificate if the person does not hold the licence or drivers certificate.

Maximum penalty: 20 penalty units or imprisonment for 2 months, or both.

Surrender of licence or drivers certificate

33. A holder of a licence or drivers certificate may surrender it by delivering it to the Council with a notification in writing that the licence or drivers certificate is surrendered.

PART 3 - TOW TRUCK OPERATIONS

Division 1 - Towing authorities

Towing authority required

34. A person who is required by the regulations to obtain a towing authority must not tow a motor vehicle on a public street by means of a tow truck unless a towing authority relating to the motor vehicle has first been obtained, and has been completed, signed and dealt with, in accordance with the regulations.

Maximum penalty: 20 penalty units.

Towing authorities

35. (1) The regulations may make provision for or with respect to towing authorities for the towing of motor vehicles.

(2) Without affecting the generality of subsection (1), the regulations:

- (a) may specify the circumstances in which towing authorities are required; and
- (b) may specify the persons who may sign towing authorities; and
- (c) may specify the particulars to be entered on a towing authority and may prescribe the form of towing authority (which may include an explanation of the rights of the owner or driver of a motor vehicle); and
- (d) may require the use of forms of towing authorities supplied by the Council and may prescribe fees for the supply of those forms; and
- (e) may prescribe procedures for dealing with towing authorities; and
- (f) may make provision for the keeping of records relating to towing authorities; and
- (g) may prohibit a person from inducing a person to sign a towing authority by knowingly making a false or misleading statement.

Division 2 - Allocation of towing work

Allocation of towing work

36. (1) The regulations may make provision for or with respect to a scheme for the allocation of towing work.

(2) Without affecting the generality of subsection (1), the regulations:

- (a) may specify the kind of work to which the scheme applies; and
- (b) may specify the manner in which towing work is to be allocated; and
- (c) may prohibit persons, other than persons to whom towing work is allocated, from attending a place for the purpose of obtaining, or from obtaining, towing work; and
- (d) may confer powers on officers of the Council or the Roads and Traffic Authority with respect to the administration and operation of the scheme; and
- (e) may apply to the whole or to one or more regions of the State; and
- (f) may apply differently to different regions or parts of regions.

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**Division 3 - Other offences relating to
towing operations**

Prohibition of drop fees

37. (1) A person must not give, or offer to give, any valuable thing in consideration of the obtaining, personally or for any other person, of the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing.

Maximum penalty: 100 penalty units.

(2) A person must not demand, receive, or offer to receive, any valuable thing in consideration of the obtaining, for any other person, of the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing.

Maximum penalty: 100 penalty units.

(3) In this section:

"valuable thing" does not include any reasonable charges (not exceeding any charges determined by the Council in respect of the towing, salvage or storage of a motor vehicle) but otherwise includes:

- (a) any money, loan, office, place, employment, benefit or advantage and any commission or rebate, payment in excess of actual value of goods or services, deduction or percentage, bonus or discount; and
- (b) not demanding any money or money's worth or valuable thing.

Threats etc.

38. (1) A person must not, by threats, intimidation or coercion, do anything to any person:

- (a) for the purpose of obtaining a towing authority; or
- (b) for the purpose of enabling any other person to obtain a towing authority; or

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(c) for the purpose of obtaining the work of repairing a motor vehicle damaged in a motor vehicle accident or otherwise requiring towing; or

(d) for the purpose of enabling any other person to obtain the work of repairing a motor vehicle damaged in a motor vehicle accident or otherwise requiring towing.

(2) A person must not, by threats, intimidation or coercion, prevent or attempt to prevent a person from complying with this Act or the regulations.

Maximum penalty: 50 penalty units.

Cleaning up of accident site

39. Except where otherwise directed by a member of the Police Force, the driver of a tow truck who tows a motor vehicle from the scene of a motor vehicle accident must, before leaving the scene of the accident, clear from the road any debris caused by or relating to the motor vehicle that is towed by the driver.

Maximum penalty: 5 penalty units.

Passengers in tow trucks

40. A person (other than the holder of a drivers certificate) must not travel as a passenger in a tow truck while the tow truck:

(a) is proceeding to the scene of a motor vehicle accident; or

(b) is towing a motor vehicle from the scene of a motor vehicle accident,

unless the person was the driver of or a passenger in the motor vehicle proposed to be, or being, towed.

Maximum penalty: 5 penalty units.

Division 4 - Tow trucks

Tow truck number-plates

41. The Roads and Traffic Authority may issue distinctive number-plates for tow trucks which are, according to the advice of the Council, to be operated by the holder of a licence.

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Construction of tow trucks

42. (1) The regulations may make provision for or with respect to the design, construction and equipment of tow trucks.

(2) Without affecting the generality of subsection (1), the regulations may prohibit the operation of a tow truck that is not designed, constructed or equipped in accordance with the regulations.

(3) A regulation made for the purposes of this section that is inconsistent with the provisions of any other regulation made under another Act prevails, to the extent of the inconsistency, over that other regulation.

Inspection of tow trucks

43. (1) The regulations may make provision for or with respect to the periodic inspection of tow trucks.

(2) Without affecting the generality of subsection (1), the regulations:

- (a) may require a tow truck to be taken to a place for the purpose of an inspection or to be made available for inspection; and
- (b) may authorise inspections to be carried out by specified persons; and
- (c) may authorise notices to be given requiring the repair or modification of tow trucks; and
- (d) may prohibit the operation of a tow truck until work specified in a notice has been carried out.

PART 4 - DISCIPLINARY PROCEEDINGS

Who may make a complaint?

44. A complaint may be made by any person that the holder of a licence or drivers certificate should be dealt with under this Part on one or more of the grounds specified in section 46 or 47.

How may a complaint be made?

45. A complaint (other than a complaint made by an officer of the Council) is to be lodged with the Council.

What are the grounds for action against the holder of a licence?

46. (1) The grounds on which the holder of a licence may be dealt with under this Part are:

- (a) that the holder of the licence made a statement in or in connection with his or her application for the licence that the holder knew to be false or misleading in a material particular; or
- (b) that the holder of the licence has contravened a condition of the licence or a provision of this Act or the regulations; or
- (c) that the holder of the licence has induced or otherwise knowingly caused a person employed by the holder to contravene a provision of this Act or the regulations; or
- (d) that the holder of the licence has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment or penal servitude for 3 months or more; or
- (e) that the holder of the licence has been guilty of fraudulent conduct or dishonesty in connection with the holder's business as a tow truck operator; or
- (f) that the holder of the licence has failed to take all reasonable precautions to prevent loss of or from, or damage to, motor vehicles towed by tow trucks operated by that holder or motor vehicles otherwise under the control of that holder; or
- (g) that the holder of the licence, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit; or
- (h) that the holder of the licence, being a corporation, is in the course of being wound up, is under official management, is a corporation for which a receiver or manager has been appointed or has entered into a compromise or scheme of arrangement with its creditors; or
- (i) that the holder of the licence does not have a place for the safekeeping of towed motor vehicles for periods of up to 72 hours; or
- (j) that the holder of the licence does not own or lease a tow truck operated by the holder in the course of carrying on the business of a tow truck operator; or

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- (k) that the holder of the licence has not satisfactorily completed any appropriate training course approved by the Council for the purposes of section 8; or
 - (l) that the holder of the licence has, for a continuous period of one month or more, ceased to carry on the business of a tow truck operator; or
 - (m) that the holder of the licence is for any other reason not a fit and proper person to hold a licence; or
 - (n) in the case of the holder of a licence, being a corporation, that a director of the corporation or a person concerned in the management of the corporation:
 - (i) has contravened a condition or provision referred to in paragraph (b) or has induced or otherwise knowingly caused a person employed by the corporation to contravene a provision referred to in paragraph (c); or
 - (ii) has been convicted of an offence referred to in paragraph (d); or
 - (iii) is for any other reason not a fit and proper person to hold a licence.
- (2) The grounds referred to in subsection (1) (except paragraph (l)) are to be taken to exist:
- (a) in the case of a joint licence - if those grounds apply to any holder of that licence; or
 - (b) in the case of 2 or more licences held by persons carrying on the business of a tow truck operator in partnership - if those grounds apply to any holder of any of those licences.

What are the grounds for action against the holder of a drivers certificate?

47. The grounds on which the holder of a drivers certificate may be dealt with under this Part are:

- (a) that the holder of the drivers certificate made a statement in or in connection with his or her application for the drivers certificate that the holder knew to be false or misleading in a material particular; or
- (b) that the holder of the drivers certificate has contravened a condition of the drivers certificate or a provision of this Act or the regulations; or

- (c) that the holder of the drivers certificate has failed to take all reasonable precautions to prevent loss of or from, or damage to, a motor vehicle towed by a tow truck driven by that holder; or
- (d) that the holder of the drivers certificate does not hold a silver or gold driver's licence issued under the Motor Traffic Regulations 1935; or
- (e) that the holder of the drivers certificate has not satisfactorily completed any appropriate training course approved by the Council for the purposes of section 19; or
- (f) that the holder of the drivers certificate is for any other reason not a fit and proper person to hold a drivers certificate.

Defendant to show cause etc.

48. (1) The Council is required to serve on a person against whom a complaint is made (in this Part called "**the defendant**") a notice calling on the defendant to show cause (on the grounds specified in the notice) why the defendant should not be dealt with under this Part if:

- (a) the complaint is made by an officer of the Council; or
- (b) a complaint is made by any other person and the Council is of the opinion that the complaint warrants the taking of further action under this Part.

(2) The Council must, after considering any representation made by the defendant within the time stipulated by the notice:

- (a) determine that the complaint does not warrant the taking of any further action; or
- (b) cause an inquiry to be held into the grounds on which the defendant has been called on to show cause.

(3) The inquiry may be conducted by the Council or by a committee of the Council, consisting of not less than 3 members of the Council, appointed by the Council for the purpose of conducting the inquiry.

(4) As soon as practicable after the receipt of a complaint (other than a complaint made by an officer of the Council), the Council must cause notice of any action taken under this section with respect to the complaint to be served on the complainant.

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Procedure for conduct of inquiries into complaints

49. (1) An inquiry is to be held at the time and place fixed by the Council or the committee before which the inquiry is to be held, being a time not less than 7 days after the defendant is notified of the time and place so fixed.

(2) An inquiry is to be open to the public.

(3) The Council or the committee:

(a) may conduct the inquiry in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit; and

(b) may allow a member of the Police Force, barrister, solicitor, public servant or officer of the Council or the Roads and Traffic Authority to appear before it for the purpose of adducing evidence tending to establish the grounds on which the defendant has been called on to show cause.

(4) The Council or the committee may call and receive evidence as to any matter relevant to the inquiry and may, subject to section 13 of the Oaths Act 1900, require any evidence at the inquiry to be given on oath.

(5) An inquiry may be held in the absence of the defendant if the Council or the committee is satisfied that the defendant was served with reasonable notice of the time and place fixed for the holding of the inquiry.

(6) A person appearing at an inquiry may, with the approval of the Council or the committee, be represented by a barrister or solicitor or by an agent.

Determination of Council after inquiry

50. (1) If, after an inquiry conducted by the Council or after consideration of the report of an inquiry conducted by a committee before which an inquiry was held, the Council is of the opinion that there exists any ground for dealing with the defendant under this Part, the Council may make any one of the following determinations:

(a) the Council may determine that no further action be taken against the defendant;

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- (b) the Council may caution or reprimand the defendant;
- (c) the Council may make a determination requiring the defendant to pay to the Council, as a penalty, an amount not exceeding \$500;
- (d) the Council may cancel or suspend the licence or drivers certificate held by the defendant.

(2) The power of the Council to make a determination under this section may not be delegated to any person or body.

(3) If a defendant is the holder of both a licence and a drivers certificate, the Council may not cancel or suspend both unless the defendant was called on to show cause in respect of both.

(4) Nothing in this section affects the liability of a defendant for an offence against this Act or the regulations or for any other offence.

Provisions relating to penalties

51. (1) If the Council makes a determination requiring a defendant to pay an amount to the Council as a penalty, the penalty required to be paid by the defendant must be paid to the Council within 21 days after the date on which notice of the determination is served on the defendant or within such further time as the Council may allow.

(2) Except as provided by section 54, if a penalty imposed on a defendant is not paid by the due date, the licence or any drivers certificate, or both, held by the defendant is or are (if not otherwise cancelled or suspended) suspended until such time as the amount of the penalty is paid to the Council.

Provisions relating to cancellation or suspension

52. (1) If the Council cancels or suspends a licence or drivers certificate, it must cause a notice of the cancellation or suspension to be served on the holder of the licence or drivers certificate.

(2) Any such notice is to state the particulars of the grounds on which the Council has cancelled or suspended the licence or drivers certificate.

(3) Except as provided by section 54, the cancellation or suspension of a licence or drivers certificate has effect on the date specified in the notice (being a date which is on or after the date that the notice is served on the holder of the licence or drivers certificate).

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(4) When the cancellation or suspension of a licence or drivers certificate has effect, the former holder or the holder of the licence or drivers certificate must, as soon as practicable, deliver it to the Council.

Penalty (subsection (4)): 5 penalty units.

Appeals against disciplinary action

53. (1) A defendant aggrieved by a determination of the Council under section 50 may appeal to a Local Court constituted by a Magistrate sitting alone against the determination.

(2) Appeals must be made within such period as is fixed by the regulations.

(3) Appeals are to be conducted in accordance with section 70 (Procedures on appeal).

Effect of appeal

54. (1) If an appeal is made to a Local Court against a determination of the Council and is not withdrawn, the determination has no effect unless the determination is confirmed by the Court or the Court otherwise orders.

(2) A determination that is confirmed by a Local Court has effect on the date on which it is confirmed or on such other date as the Court orders.

Determination of appeal

55. (1) A Local Court, in determining an appeal:

- (a) may confirm the determination of the Council; or
- (b) may disallow that determination and make such other order as the Court considers appropriate.

(2) The determination of a Local Court in an appeal is to be taken to be the final decision of the Council and is to be given effect to by the Council.

PART 5 - TOW TRUCK INDUSTRY COUNCIL

Constitution of the Council

56. (1) There is constituted by this Act a corporation with the corporate name of the Tow Truck Industry Council of New South Wales.

(2) The Council is to consist of 8 part-time members, appointed by the Minister, of whom:

- (a) 1 is (in and by the member's instrument of appointment) to be appointed as Chairperson of the Council; and
- (b) 2 are to be persons chosen by the Minister from a panel of 5 persons nominated by the Council of the Motor Traders' Association of New South Wales; and
- (c) 2 are to be persons chosen by the Minister from a panel of 5 persons nominated by the Auto Recovery Association; and
- (d) 1 is to be a person chosen by the Minister from a panel of 5 persons nominated by the Council of the National Roads and Motorists' Association of New South Wales; and
- (e) 1 is to be a person chosen by the Minister from a panel of 5 persons nominated by the Insurance Council of Australia Limited; and
- (f) 1 is to be an officer of the Roads and Traffic Authority.

(3) The Council is not and does not represent the Crown.

(4) Schedules 1 and 2 have effect with respect to the Council.

General functions of the Council

57. The Council has the functions conferred or imposed on it by or under this Act or any other legislation.

Functions of the Council relating to standards etc.

58. The functions of the Council are:

- (a) to keep the operation of this Act under review; and
- (b) to make reports and recommendations to the Minister with respect to the licensing of tow truck operators and drivers and the design, construction and equipment of tow trucks; and
- (c) to inform the public about the tow truck industry; and
- (d) to promote and undertake research into the tow truck industry; and
- (e) whenever it considers it necessary to do so or it is requested by the Minister to do so, to make reports or recommendations with respect to the operation of this Act or the tow truck industry.

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Towing and other charges

59. The Council may from time to time determine the maximum charges which may be charged by tow truck operators for the towing, salvage or storage of motor vehicles.

Employment of staff

60. (1) The Council may employ such staff (including an executive officer) as it requires to exercise its functions.

(2) The Council may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

(3) The Council may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department, an administrative office, a declared authority within the meaning of the Public Sector Management Act 1988 or a local authority.

(4) The Council may employ or arrange for the use of the services of a person as an executive officer to manage and control the affairs of the Council in accordance with the policies of the Council and subject to any directions of the Council.

(5) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Council.

Consultants

61. The Council may engage such consultants as the Council requires to exercise its functions.

PART 6 - FINANCE

Tow Truck Industry Fund

62. There is to be established in the Special Deposits Account in the Treasury a Tow Truck Industry Fund.

Payments into the Fund

- 63.** There is to be paid into the Tow Truck Industry Fund:
- (a) all money received by or on account of the Council; and
 - (b) all money borrowed by or advanced to the Council or appropriated by Parliament for the purposes of the Council; and
 - (c) income on investments under section 66; and
 - (d) all other money required by or under this or any other Act to be paid into the Fund.

Payments from the Fund

- 64.** There may be paid from the Tow Truck Industry Fund:
- (a) all amounts required to meet expenditure incurred in the administration or execution of this Act and the regulations; and
 - (b) all payments made on account of the Council or otherwise required to meet expenditure incurred in relation to the functions of the Council; and
 - (c) all other payments required by or under this or any other Act to be paid from the Fund.

Financial year

65. (1) The financial year of the Council is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Investment

- 66.** The Council may invest money held by it:
- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
 - (b) if that Act does not confer power to invest money held by the Council:
 - (i) in accordance with and subject to the Trustee Act 1925; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

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PART 7 - GENERAL

Refund of fees

67. (1) If an application for a licence or drivers certificate is refused or a licence or drivers certificate is cancelled, the Council may refund the whole or part of any fees paid in respect of the application, licence or drivers certificate.

(2) Without affecting the generality of subsection (1), the Council may, in determining whether the whole or part of a fee is to be refunded, have regard to any costs incurred by the Council with respect to the application, licence or drivers certificate.

Disclosure of information

68. (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or the regulations (or any other Act conferring or imposing functions on the Council) unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or the regulations (or any such other Act); or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations (or any such other Act) or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section, "relevant information" means:

- (a) information concerning the business and financial affairs of the person from whom the information is obtained; or
- (b) information concerning any inquiry or report under section 28.

Delegation

69. (1) The Council may delegate to an authorised person any of the functions of the Council, other than this power of delegation and the power to make a determination under section 50.

(2) A delegate may sub-delegate to any person any function delegated by the Council if the delegate is authorised in writing to do so by the Council.

Procedures on appeal

70. (1) An appeal to a Local Court under this Act is to be by way of a new hearing and new evidence or information, or evidence or information in addition to or in substitution for the evidence or information on which the decision appealed against was made, may be given on the appeal.

(2) In addition to any other functions and discretions that the Local Court has apart from this subsection, a Local Court has, for the purpose of hearing or disposing of an appeal, all the functions and discretions that the Council had in respect of the matter the subject of the appeal.

(3) A Local Court hearing an appeal may conduct the appeal in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.

Personal liability of members etc.

71. A matter or thing done by the Council, the Chairperson or other member of the Council or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Chairperson or other member or a person so acting personally to any action, liability, claim or demand.

Contracting out void

72. (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary.

(2) No contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

Council may require information

73. (1) The Council may, by notice in writing, require any person to furnish to the Council, within such period as may be specified in the

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notice, such information in connection with any tow truck, towing or the business of any tow truck operator as may be so specified and is within the person's knowledge or in the person's custody or under the person's control.

(2) A person must comply with any such requirement.

Maximum penalty: 5 penalty units.

(3) Any information furnished pursuant to any such requirement is not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it may tend to incriminate the person or might be used in any proceedings against the person under Part 4, admissible in evidence in any prosecution against that person for any offence (not being an offence under subsection (2)) or admissible in any such proceedings.

Production of licences and drivers certificates

74. (1) The holder of a licence must on demand, while carrying on the business of a tow truck operator, produce the licence to an officer of the Council or a member of the Police Force.

(2) The holder of a drivers certificate must on demand, at the scene of a motor vehicle accident or while otherwise engaged in towing work, produce the drivers certificate to:

- (a) an officer of the Council; or
- (b) a member of the Police Force; or
- (c) an officer of the Roads and Traffic Authority authorised by the Council in that respect; or
- (d) a person who engages the holder to do towing work.

Maximum penalty: 5 penalty units.

Power of entry and examination

75. (1) For the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, a person authorised in writing by the Council may, at any reasonable time, enter any place which the authorised person has reasonable grounds for believing is a place at which the firstmentioned person carries on business as a tow truck operator or which the authorised person has reasonable grounds for believing is used to carry on that business.

(2) This section does not authorise a person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

(3) A person authorised in writing by the Council may, for the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, enter and examine any tow truck.

(4) A person authorised in writing by the Council may:

- (a) require any person employed or engaged at or on or about any place or tow truck entered pursuant to this section to produce to the authorised person such records, or other documents, as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged; and
- (b) examine any person employed or engaged at or on or about any place or tow truck so entered with respect to matters under this Act or the regulations; and
- (c) make at any place or tow truck so entered such examination and inquiries as the authorised person thinks necessary to ascertain whether requirements of this Act or the regulations are being or have been contravened.

Authority to be produced

76. A person authorised under section 75 must, at the request of any other person in respect of whom the person is exercising functions under that section, produce the Council's authorisation under that section.

Offence to obstruct officer etc.

77. A person must not, after a person authorised under section 75 has produced his or her authorisation to the person:

- (a) refuse or intentionally delay the admission to any place or a tow truck of the authorised person in the exercise by the authorised person of any power under this Act or the regulations; or
- (b) intentionally obstruct the authorised person in the exercise by the authorised person of any such power; or

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- (c) neglect or fail to comply with a request or requirement of the authorised person made under this Act or the regulations for the production of any record or other document; or
- (d) conceal any person from the authorised person or prevent any person from appearing before or being examined by the authorised person or attempt so to conceal or prevent any person.

Maximum penalty: 20 penalty units.

Evidence

78. (1) If in any legal proceedings it is proved that on a certain day or during any period a person was the holder of a licence or a drivers certificate, it is to be presumed, in the absence of proof to the contrary, that the person was carrying on the business of a tow truck operator or was employed as a tow truck driver on that day or during that period.

(2) A certificate purporting to be signed by the Chairperson of the Council or an officer authorised by the Council for the purposes of this section certifying:

- (a) that a person was or was not on a specified date a holder of a licence or a drivers certificate; or
- (b) that particulars specified in the certificate were on a specified date the particulars specified in the licence or drivers certificate; or
- (c) that a licence or drivers certificate specified in the certificate was during any specified period suspended; or
- (d) that a licence or drivers certificate specified in the certificate was on a specified date cancelled or surrendered,

is admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.

Service of documents

79. (1) Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served:

- (a) by delivering it personally to the person to whom it is addressed; or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some

person apparently of or above the age of 16 years for the person to whom it is addressed; or

(c) by post.

(2) Any such notice or instrument addressed to the holder of a licence or drivers certificate at the place last entered in the records of the Council as the holder's place of residence or business is to be taken to be properly addressed for the purposes of section 76 of the Interpretation Act 1987.

(3) A document may be served on the Council by leaving it at, or by sending it by post to:

(a) the office of the Council; or

(b) if the Council has more than one office - any one of its offices.

(4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person or the Council in any other manner.

Recovery of charges etc. by Council

80. Any charge, fee, penalty or money due to the Council may be recovered by the Council as a debt in a court of competent jurisdiction.

Offences by corporations

81. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

82. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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Regulations

83. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) any matter connected with licences and drivers certificates, including qualifications for licences and drivers certificates; and
- (b) advertising by tow truck operators; and
- (c) the records to be kept by tow truck operators; and
- (d) the display of signs by tow truck operators; and
- (e) the furnishing by the holders of licences or drivers certificates of any information (including, in the case of holders of licences, particulars of any of their employees); and
- (f) the charging and payment of a fee for any inspection made or information supplied by the Council; and
- (g) the conduct and duties of persons operating or driving tow trucks and of persons employed on or about them or otherwise employed in the business of a tow truck operator; and
- (h) the conduct of persons in relation to the use or operation of tow trucks; and
- (i) prescribing the conditions under which tow trucks may be operated; and
- (j) inquiries under Part 4; and
- (k) the disposal of unclaimed motor vehicles in the care or custody of tow truck operators; and
- (l) the premises and places to which tow truck operators deliver, or cause to be delivered, motor vehicles towed by the tow trucks they operate, the use of those premises and places by those operators and the towing of motor vehicles to those premises and places.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeals

84. Each Act specified in Schedule 3 is repealed.

**Amendment of Public Authorities (Financial Arrangements) Act 1987
No. 33**

85. The Public Authorities (Financial Arrangements) Act 1987 is amended by inserting in Schedule 1 in alphabetical order the words "Tow Truck Industry Council of New South Wales".

Amendment of Public Finance and Audit Act 1983 No. 152

86. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 in alphabetical order the words "Tow Truck Industry Council of New South Wales".

Savings, transitional and other provisions

87. Schedule 4 has effect.

**SCHEDULE 1 - CONSTITUTION AND MEMBERS
OF THE COUNCIL**

(Sec. 56 (4))

Nominations for membership etc.

1. (1) If nominations of persons to constitute a panel for the purposes of section 56 are not made within the time specified by the Minister to the body entitled to make the nominations, the Minister may appoint a person or persons to be a member or members instead of a person or persons from that panel and the person or persons so appointed is or are to be taken to have been duly nominated.

(2) If a body referred to in section 56 (including a body taken to be so referred to by an order made under this subclause) changes its name and the Minister is satisfied that the change of name is not accompanied by a change in the nature of the body, the Minister may, by order published in the Gazette, so certify and, as from the date of that publication, the reference to the body in section 56 is to be taken to be a reference to the body under that changed name.

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**SCHEDULE 1 - CONSTITUTION AND MEMBERS OF THE
COUNCIL - *continued***

(3) If a body referred to in section 56 ceases to exist or the Minister is satisfied that the nature of the body has changed, the Minister may, by order published in the Gazette, approve in its place a body to make nominations for the purposes of section 56 and the provisions of this Act apply to that body as if it were a body referred to in section 56.

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy:

- (a) is, if available, to act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of members

3. Subject to this Schedule, a member holds office for such period (not exceeding 2 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

SCHEDULE 1 - CONSTITUTION AND MEMBERS OF THE
COUNCIL - *continued*

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

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SCHEDULE 1 - CONSTITUTION AND MEMBERS OF THE
COUNCIL - *continued*

(2) The Minister may remove a member from office at any time.

Disclosure of pecuniary interests

6. (1) If

- (a) a member of the Council has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Council in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter; or
- (b) take part in any decision of the Council with respect to the matter.

**SCHEDULE 1 - CONSTITUTION AND MEMBERS OF THE
COUNCIL - *continued***

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a tow truck operator or driver.

Filling of vacancy in office of member

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office;
or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

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SCHEDULE 2 - PROCEDURE OF THE COUNCIL

(Sec. 56 (4))

General procedure

1. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

2. The quorum for a meeting of the Council is a majority of the members for the time being.

Presiding member

3. (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Transaction of business outside meetings or by telephone etc.

5. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter being considered at the meeting can be heard by the other members.

SCHEDULE 2 - PROCEDURE OF THE COUNCIL - *continued*

- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1); or
 - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member of the Council have the same voting rights they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the Council.
- (5) Papers may be circulated among members of the Council for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

First meeting

6. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 3 - REPEALS

(Sec. 84)

Tow-truck Act 1967 No. 46
Tow Truck Industry Act 1987 No. 167
Motor Vehicle Repairs (Tow Truck Industry) Amendment Act 1987
No. 168
Tow Truck Industry (Revocation of Proclamation) Act 1988 No. 39
Tow-truck (Amendment) Act 1988 No. 84

**SCHEDULE 4 - SAVINGS, TRANSITIONAL
AND OTHER PROVISIONS**

(Sec. 87)

PART 1 - SAVINGS AND TRANSITIONAL REGULATIONS

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

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SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENTIAL ON THE ENACTMENT OF THIS ACT

Licence holders under the Tow-truck Act 1967

2. (1) A person who is, immediately before the repeal of the Tow-truck Act 1967, the holder of a licence under that Act in respect of a tow truck is, on and from that repeal, for the purposes of this or any other Act, to be taken to be the holder of a licence under this Act authorising the person to carry on the business of a tow truck operator.

(2) Any such licence is to be subject to such conditions as may be imposed by the Council under section 9 and is to remain in force for the period for which it would have been in force if the Tow-truck Act 1967 had not been repealed.

(3) A person referred to in subclause (1) is qualified to hold a licence under this Act, and to apply for a licence under this Act, even though the person does not meet a qualification set out in section 8 (c)-(g).

(4) Subclause (3) ceases to have effect on the third anniversary of the commencement of this clause.

(5) Nothing in subclause (3) prevents action from being taken under Part 4 in respect of a person referred to in subclause (1).

Drivers' certificate holders under the Tow-truck Act 1967

3. (1) A person who is, immediately before the repeal of the Tow-truck Act 1967, the holder of a driver's certificate is, on and from

SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

that repeal, for the purposes of this or any other Act to be taken to be the holder of a drivers certificate under this Act.

(2) Any such drivers certificate is to be subject to such conditions as may be imposed by the Council under section 20 and is to remain in force for the period for which it would have been in force if the Tow-truck Act 1967 had not been repealed.

(3) A person referred to in subclause (1) is qualified to hold a drivers certificate under this Act, and to apply for a drivers certificate under this Act, even though the person does not meet a qualification set out in section 19 (b) or (c).

(4) Subclause (3) ceases to have effect on the third anniversary of the commencement of this clause.

(5) Nothing in subclause (3) prevents action from being taken under Part 4 in respect of a person referred to in subclause (1).

Applications under the Tow-truck Act 1967

4. (1) An application for a licence or a driver's certificate made under the Tow-truck Act 1967 before the repeal of that Act and not determined before that repeal is to be dealt with under this Act as if it were made under this Act.

(2) A permit granted under the Tow-truck Act 1967, and in force immediately before the repeal of that Act, continues in force as if that Act had not been repealed until such time as the relevant application in respect of which the permit was granted is determined or the permit is revoked by the Council, whichever first occurs.

Existing records

5. The Roads and Traffic Authority must at and in accordance with the Council's request deliver to the Council any records kept under section 17 of the Tow-truck Act 1967.

Recovery of advances and money expended by Roads and Traffic Authority

6. (1) The Roads and Traffic Authority may, before or after the commencement of section 56:

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SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

(a) do such things as it thinks fit; or
(b) advance money to the Council,
or both, for the purposes of, or in connection with, the establishment
of the Council and the commencement or administration or execution
of this Act.

(2) The Council must, at the request of the Roads and Traffic
Authority with the concurrence of the Minister, pay to the Authority
from the Tow Truck Industry Fund such amounts as the Authority may
request, being amounts to reimburse the Authority for advances made,
or expenditure incurred, under this clause.

[*Minister's second reading speech made in -
Legislative Assembly on 18 October 1989
Legislative Council on 22 November 1989*]